

DIY Special Guardianship Orders – information for family and friends carers

About this advice sheet

What information will I find in this advice sheet?

Sometimes there is a crisis in the family home and it is necessary for children to be looked after by someone other than their parents. This can be for a short or long term period. In these circumstances relatives and friends often come forward to take on the care of the child.

If you are in this situation, you may decide that you want to apply to court for a special guardianship order (SGO). This is a court order which says that the child will live with you permanently and gives you the right to make decisions about the child's care. This advice sheet tells you what an SGO means for family and friends carers and how to apply for one.

Note: If a social worker was involved in arranging for the child to live with you, you may be entitled to be treated as a foster carer. This may be very helpful for you in terms of getting support (including finance) to look after the child, so it is a good idea to get advice from Family Rights Group (FRG) advice service or a solicitor specialising in child welfare law about the best course of action before you decide to go ahead and apply for an SGO.

Using this advice sheet

This advice sheet is divided up into parts to make it easier to understand.

- ✓ Part 1: gives information about SGOs
- ✓ Part 2: explains how to apply to court for an SGO
- ✓ Part 3: gives information about getting help to raise the child
- ✓ Part 4 suggests where you can go for more information
- ✓ The appendices give extra information on:
 - The different legal ways in which family and friends carers can look after children
 - What children's services must cover in their SGO report
 - Filling in the forms

The references for the different legal and practice requirements mentioned throughout this advice sheet can be found in Part 4 below. You may also want to ask a friend, your social worker, or your solicitor to explain anything in the advice sheet that you don't understand.

Note: "Social services" are now known as "children's services". This is how they are referred to throughout this advice sheet.

Important terms used in this advice sheet

- **Child 'in need':** A child is "in need" if they are disabled, or they are assessed by children's services to be in need of extra support for their safety, health and/or development. If your child is assessed as a child in need children's services may provide your family, or child, with extra help
- **'Looked after'** means that the child is in care due to a court order or accommodated by children's services in agreement with the parents/someone with parental responsibility. This is sometimes known as a Section 20 arrangement)
- **'In care'** means that the child is under an interim or full care order or an emergency protection order and is looked after by children's services

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- **Parental responsibility** means the legal right to make decisions about a child's care. For more information on who has parental responsibility see FRG advice sheet on Parental Responsibility: <http://www.frg.org.uk/need-help-or-advice/our-advice-service/advice-sheets>
- **Family and friends foster care** means that you are caring for the child as an approved foster carer on behalf of children's services and the child you are caring for is 'looked after'
- **Family and friends carer**, also known as kinship carer or connected persons carer, which means you are caring for someone else's child. The child might be looked after by children's services or they might be with you under some other arrangement.

PART ONE: INFORMATION ABOUT SPECIAL GUARDIANSHIP ORDERS

What is a Special Guardianship Order (SGO)?

An SGO is a court order which:

- Secures a child's home with someone who is not their parent, on a long term basis and
- Gives parental responsibility to that person.

It is often seen as similar to, but one step below, adoption, because, although the birth parents' rights are restricted, they are not permanently ended.

Arrangements for special guardianship might be made:

- Directly between the parents and yourself (as the intended special guardian). This includes when the parents have made arrangements for you to look after their child because of a long term difficulty and they would prefer their child to stay within the family network rather than having to go into the care system; or
- By a social worker, who has placed the child with you as a foster carer working for children's services on a long term basis; and you have then decided that you want to secure the arrangement legally so that the social worker is no longer involved.

What is the effect of an SGO?

- An SGO lasts until the child reaches 18 unless it is ended by a court order before then.
- An SGO automatically ends any existing care order on the child.¹
- An SGO gives the special guardian parental responsibility for the child which they can exercise to the exclusion of anyone else with parental responsibility.² This means that although the parents still have parental responsibility,³ as a special guardian you can make all the major decisions about the child's upbringing, and you do not have to consult with the parents about these decisions. However there are a few exceptions to this rule, for example

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- You cannot change the child's surname
- You cannot or take him/her outside the UK for a period of more than **three months** without the written consent of everyone with parental responsibility or the permission of the court
- No other person may take him/her outside the UK **for any period** without either the written consent of every person who has parental responsibility for the child or the permission of the court. For details of who has parental responsibility see FRG advice sheet Parental Responsibility
<http://www.frg.org.uk/need-help-or-advice/our-advice-service/advice-sheets>
- You cannot consent to the child being adopted or placed for adoption.⁴
- If the child dies, you must notify each parent who has parental responsibility or the child's guardian⁵
- As special guardian you can also legally appoint someone to look after the child after your death⁶, known as a testamentary guardian. For more information about testamentary guardians and how these are different to special guardians, see Appendix 1 on page 53.

What happens if there is a disagreement between the special guardian and the parents about how the child is raised?

As special guardian, you have 'exclusive' parental responsibility for the child which means you can decide things for the child without having to discuss it with the parents or anyone else with parental responsibility. But the parent still has a right to apply to the court for an order to resolve any dispute that may have arisen between you about how the child is raised.⁷ This might arise, for example, if the parent was unhappy about a decision you had made about which school the child will go to.

If the parent applies for one of these orders, the court would decide the question that is in dispute. But if the parent keeps on applying to court to challenge lots of decisions you make, the court can stop them doing this if it is becoming unreasonable.⁸ For further advice on this contact Family Rights Group advice line – contact details in part 4 of this advice sheet.

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Who can apply for an SGO?

- You can apply for an SGO if you are over 18.
- You don't need to be related to the child.
- You can apply on your own or jointly with another person.

But, some people need permission of the court to apply for an SGO. See part 2 for further information on how to apply (page 10).⁹

The court can also make an SGO in any existing family case without you having to make an application, if it thinks this would be in the child's best interests.¹⁰

How will the court decide whether or not to make an SGO?

When deciding whether or not to make an SGO, the court must follow the 'welfare principle'¹¹ which means that the child's welfare is the most important consideration. It must take account of a number of factors, known as 'the welfare checklist'¹² when deciding what is best for a child, then consider the 'presumption of no order', and how to best avoid delay for the child..

The welfare checklist

- The child's wishes and feelings depending on their age and maturity. The social worker will normally speak directly to the child about their wishes and feelings unless they are too young. They will then set out in their report to the court what the child is saying. This may be particularly important if a child is finding it difficult to tell their parent or carer directly who they want to live with.
- The child's physical, emotional and/or educational needs. The court will consider you and the other party's proposals for meeting the child's needs. So if, for example, the child will have to change schools in order to live with you, you will need to show that this is necessary to meet their other needs, such as being able to live with a relative rather than go into care, or to protect them from neglect.
- The likely effect on the child of any change in circumstances for example the disruption of the child moving home will be outweighed by the benefits of the care they will receive whilst living with you.

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- The child's age, sex, and background and any other characteristic the court finds relevant, including the child's religion, ethnic background, language(s) spoken and any disability s/he may be suffering from. The court will look at how any relevant needs the child has relating to these characteristics could be met by you in the future.
- Any harm which the child has suffered or is at risk of suffering. The court will need to be reassured that you can protect the child from harm, including keeping them safe during contact visits.
- How capable each of the child's parents (or other relevant person) is of meeting their needs. This means the court will consider your proposals to care for the child and your ability to do that, alongside any proposals from their parents and others who have a significant relationship with them.
- The power of the court to make other orders. In some circumstances the court can make a different order from the one you have applied for if it thinks this would be in the best interests of the child - for example you might have applied for an SGO but it may think that a Child Arrangements Order (saying who the child should live with) is more appropriate. It must also consider the proposed contact arrangements for the child when making an SGO and therefore it may also make a contact order.

Presumption that the order will only be made if it benefits the child

The court must be satisfied that making an SGO is better for the child than not making an SGO¹³. It will also want to look at evidence about all possible options for the child to see if your proposal will best meet the child's needs following the welfare checklist.¹⁴

Avoiding delay

The court must follow the general principle that any unplanned delay in deciding the case is likely to negatively affect the child¹⁵. However, sometimes delays can be beneficial, for example where you need to be assessed as a carer for the child. In these circumstances, the court will weigh up the potential benefits of delaying the case against the possible harm such a delay might cause to the child.

If you are applying for a Special Guardianship Order in a case where there are already care proceedings underway, there are new rules that mean that the case (including the SGO application) must be concluded within 26 weeks. For further information see part 2 (in blue) and FRG advice sheet Care and Related Proceedings <http://www.frg.org.uk/need-help-or-advice/our-advice-service/advice-sheets>

Can the child keep in contact with other family members when an SGO has been made?

Yes. Many children who are under an SGO will remain in contact with most, if not all, members of their family as long as this is in their best interests. Therefore, before making an SGO the court is required to consider whether to make a child arrangements order setting out contact arrangements¹⁶.

The court can make a child arrangements order even if the special guardian does not agree. A child arrangements order can also be made at a later date.¹⁷

Children's services may also provide **support services to help with contact arrangements** including:¹⁸

- Cash to cover transport costs
- Mediation services to help resolve difficulties which may arise on contact.

See pages 12-14 for further information on mediation.

Can I receive support to help me raise a child under an SGO?

It is possible to receive financial help and other types of support with an SGO depending on the circumstances and the child's needs. See part 3 below.

When can an SGO be ended?

Unlike an adoption order, an SGO can be ended (discharged) if circumstances change. The following people have a right to apply for it to be ended:

- The child's special guardian;
- Any person who is named in a child arrangements order as the person who the child lives with or who has a residence order; and
- Children's services if they have a care order.¹⁹

Other people can also apply to end it but they will need to ask the court for permission first. The people who need to do this are:²⁰

- The child (provided they have a good enough understanding of what it means to discharge an SGO)
- A parent or testamentary guardian
- A step-parent who has parental responsibility²¹
- Any other person who had parental responsibility for the child immediately before the SGO was made.

The court will only give permission to apply to end the SGO to these people if it is thinks that:

- There has been a “**significant change of circumstances**” since the original SGO was made.²² This will include looking at how likely the person is to succeed in their main application to end the SGO; and
- It is in the child's best interests to discharge the order.²³

The court may also vary or end the SGO if a question about the child's welfare arises in any other family case even though no application has been made to end the order.²⁴

An SGO will end on the death of the special guardian, unless it is an order made jointly to two special guardians, and one survives.

PART TWO: HOW DO I APPLY FOR AN SGO?

This section is intended to help you understand the different stages of the application whether or not you have a solicitor.

Stage one: questions to consider

Do I need an order at all?

First, you should consider whether a court order is needed at all. Sometimes family disputes can be resolved without going to court for example by using a family group conference or family mediation.

Family Group Conferences

A family group conference (FGC) is a family-led decision-making process in which the whole family comes together to make plans and decisions for a child who needs a plan that will keep them safe and promote their welfare. Professionals (for example social workers) are involved in:

- Setting out their key concerns which must be addressed in the plan at the start of the meeting and
- Agreeing the plan and any help which children's services will provide in the last stage of the meeting.

But the family are given time to draw up a plan in private which addresses the professionals' concerns and keeps the child safe. For more information see FRG advice sheet on family group conferences.: <http://www.frg.org.uk/need-help-or-advice/our-advice-service/advice-sheets>

You do not have to have an FGC but if you are offered one, it is usually a good idea to accept as they are generally very helpful. If you haven't been offered an FGC but you think it would be useful in your case to have one, you can ask the child's social worker (if there is one) or the CAFCASS officer how you may get referred to a family group conference service in your area.

Even if you have an FGC and make a family plan which is agreed by the social worker or you mediate an agreed solution for the child, you may still want a court order in order to:

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- Secure an arrangement which has been agreed in the family and/or with the social worker and
- Enable you to get parental responsibility to make key decisions about raising the child.

So you may ***still need to go to court to ask the court to make an SGO*** to confirm the agreement you have reached.

Family mediation

Family mediation involves a mediator helping people who disagree about arrangements for a child to discuss possible solutions, for example about contact arrangements or where the child should live. They keep the discussion very focussed on the areas of disagreement and what the adults think are the child's needs, rather than their own. Sometimes this involves the mediator seeing the child to ask for their views on particular issues to inform the adults' discussions. The mediator is neutral and therefore does not take sides. It is the people taking part in the mediation rather than the mediator who make plans for the child.

Do I have to attend mediation before I make an application for a court order?

The law has recently changed so that, unless there is evidence of domestic violence or there are child protection concerns, people who apply for a court order about children's arrangements have to meet with a mediator to discuss whether mediation may be a suitable way of resolving their case, before making their application to court²⁵. This meeting is called a mediation, information and assessment meeting or 'MIAM'.

This means that if you want to apply to court for a special guardianship order, you will normally have to prove to the court that you have met with a mediator to discuss whether your case could be resolved through mediation. This is shown by the mediator signing the form FM1 which you have to complete and send in with either the C1 or C2 form (see appendix 4 below). So you need to arrange to see a mediator for mediation, information and assessment meeting (known as a MIAM)

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before you apply to court for a special guardianship order. Information on how to find a family mediator may be obtained from here:
www.familymediationcouncil.org.uk

Domestic violence or child protection concerns

You do not have to meet with a mediator before you apply to court if either:

a) There is evidence of domestic violence:

- You or the child who is the subject of your application has been a victim of domestic violence
- Evidence of this has to be of a kind set out in the court rules. See appendix 5 below for a list of the kinds of evidence that can be relied on.

b) There are child protection concerns:

- You can prove to the court that the child you want to live with you (or another child living in the same household), is the subject of a child protection investigation being carried out by children's services or is the subject of a child protection plan²⁶
- Evidence of this could be a letter from children's services saying that they are making child protection enquires or a copy of the child protection plan, or
- The child you want to live with you is already under a care order, an emergency protection order or is the subject of on-going care proceedings or proceedings for an emergency protection order.²⁷

c) The application is urgent:

If you can show that the delay caused by attending a MIAM would cause

- A risk of harm to a child; or
- A risk of unlawful removal of a child from the United Kingdom, or a risk of unlawful retention of a child who is currently outside England and Wales;

d) Previous MIAM attendance:

- In the last 4 months you have attended a MIAM about this same child.

If you rely on any of these reasons for not attending a MIAM, you will have to provide evidence to the court when you make your application. You don't have to

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include that evidence with your application form, but you do have to say what it is (by ticking the right box) and you will have to provide it to the court at the first hearing.

You can find out more in the court information leaflet Form CB1: at <http://hmctsformfinder.justice.gov.uk/courtfinder/forms/cb001-eng.pdf>. You can also go to the family mediation website for more information, at <http://www.familymediationcouncil.org.uk>. Or for more information please contact Family Rights Group advice line, details in part 4 of this advice sheet.

When is an SGO normally made?

Although there is no rule that says when an SGO might be made, it is often used in the following situations:

- When a child is placed permanently with a carer but everyone agrees that links with the birth parents should continue
- When a child is placed within his or her wider family and adoption is not appropriate because it would confuse family relationships.

What other legal arrangements might I consider?

If you are sure a court order (or other formal arrangement) is required, then you might also want to consider:

Child arrangements order (CAO)

A child arrangements order that says who the child should live with is quite similar to an SGO, except that it is easier to bring it to an end. The main features of a child arrangements order are

- A CAO lasts until the child is 18 unless it is ended by the court before then
- A parent does not need the permission of the court to apply to end the order.
- The person with the CAO has parental responsibility for the child and may make decisions about his/her care

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- The parents also retain parental responsibility for their child and must be consulted about some decisions, such as taking the child outside UK for more than one month and changing the child's surname
- If you have a CAO you cannot appoint a guardian to look after the child after your death

For more information about child arrangements orders see FRG advice sheet DIY child arrangements orders: Information for family and friends carers

<http://www.frg.org.uk/need-help-or-advice/our-advice-service/advice-sheets>

Long Term Foster Care

When a care order has been made or the parents or others with parental responsibility agree that the child should be in the care system, children can be placed permanently by children's services with long-term foster carers. These are foster carers who have agreed to be the child's foster parent until they leave care²⁸. The first choice they should consider is any relatives or friends of the child who are approved as formal foster carers. This means you could ask to be approved as a foster carer. This can be a good option if you feel you need the help and support of Children's Services to look after the child, for example if you want to have guaranteed financial help in the form of a foster carer's allowance to be able to look after the child. The main features of being a foster carer are

- You have to be assessed and approved as foster carers by children's services
- You do not have parental responsibility for the child. This means that you must refer back to children's services about all major decisions about raising the child
- You cannot appoint a testamentary guardian to look after the child after your death
- If there is no care order but the parent has agreed to the child being 'accommodated' by children's services, the parent has the legal right to remove the child from your care unless children's services or you apply for a court order to stop them doing this
- If children's services has a care order, it can end the placement at any time and you can only challenge this by applying for a child arrangements order or special guardianship order.

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For more information about this see Family Rights Group advice sheet Family and Friends Care: becoming a foster carer- <http://www.frg.org.uk/need-help-or-advice/our-advice-service/advice-sheets>

Adoption order

Adoption is rarely considered appropriate for relatives or friends caring for children because it changes family relationships. For example if a child is adopted by their grandparents, their mother becomes their sister. However, it is still technically possible in these circumstances.

The main features of an adoption order are as follows:

- The child ceases to be a member of his family of origin (birth) family. Instead, they become legally related to the adoptive family
- The adoptive parents become fully responsible for the child in all respects. They have parental responsibility and do not need to refer to anyone else unless a court orders otherwise
- An Adoption Order cannot be reversed

For further information about the legal options for a child who is living with relatives or friends see Appendix 2 on page 55.

Important note:

- Contact may continue between the child and their parents and other relatives in all the above situations if this is in their best interests.
- Social workers sometimes put pressure on long-term carers to take out SGOs. It is really important to get advice before making this decision. If you feel you are being pushed into this option, you can call Family Rights Group advice line for free advice – contact details in Part 4 of this advice sheet.

STAGE TWO: NOTIFYING CHILDREN'S SERVICES OF YOUR APPLICATION FOR AN SGO:

In all cases, the court cannot make an SGO unless it has received a report from children's services on whether you would be a suitable special guardian.

Therefore, you cannot make an application for an SGO unless you have given notice to children's services of your intention to apply for an SGO at least three months before you make your application.

- You can give this notice simply by writing them a letter saying that you plan to apply for an SGO. Keep a copy of your letter.
- Which children's services department you write to depends on whether the child is already looked after. If they are, then you must inform that children's services department. If not, it will be children's services where you live.
- If you fall into the category of people who need the court's permission to apply for an SGO (see page 25-26), you must get this permission before giving this notice to children's services.
- Once children's services receive this notice, they must investigate and file a report with the court on your suitability to be a special guardian and other related questions. This will involve a social worker or another child care professional talking to you to find out background information and your current views about the placement, contact arrangements for the child to keep in touch with important people in their family etc. What the report covers is set out in Appendix 3 on page 56.

Once this report is filed by children's services, the court must consider whether the report should or should not be shared with each of the parties in the case and if so whether any parts of it should be deleted beforehand.

STAGE THREE: SOLICITORS AND LEGAL COSTS

Do I need a solicitor?

Although many people prefer to have a solicitor to help them make an application to court, it is possible to apply to court for an SGO on your own as a 'litigant in person' if you cannot afford or do not want a solicitor. If you apply without a solicitor you will still have to pay the court 'issue fee'. If you are on a very low income you may be exempt from having to pay it - for more information see page 30.

If I have a solicitor, will I have to pay legal fees?

If you ask a solicitor to apply for an SGO on your behalf, you will be responsible for paying their costs, unless you are eligible for legal aid (see next section). This can be extremely expensive. Your solicitor's fees usually cover the cost of preparing your case, filing forms at court, representing you in court and other related costs. The costs can quickly run into thousands so you need to discuss with the solicitor at the first meeting what the costs are likely to be and then consider whether you can afford to have a solicitor help you.

However, even if it is expensive, you may feel you need a solicitor to help you with your application, at least for part of the process, for example because you think the case may be contested or because it is particularly complex. If your funds are tight, we strongly suggest that from the outset you explain your financial situation to your solicitor and discuss with them how work can be divided between them and you, so that you are only using them when it is necessary and you are not running up avoidable costs. This is important, since we have seen cases where carers have run out of money and have had to stop using their solicitor just when they most needed their help.

If you cannot afford the solicitor's costs yourself there are some other options:

Legal Aid

Changes to the legal aid system in England and Wales mean that, legal aid in family cases is considerably reduced. This section of the advice sheet outlines what kind of cases are still eligible for legal aid, and whether your income and capital will

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be taken into account. But, if you are thinking of instructing a solicitor and you think you may be eligible for legal aid, we strongly recommend that you contact the community legal advice helpline or a solicitor who accepts legal aid cases and ask them to assess your eligibility. Contact details for both are in part 4 of this advice sheet.

You may still be able to get legal aid in the following situations:

a) Where children's services have applied to court for a care and/or adoption order

- If children's services have made an application for a care order, and
- you are applying for an SGO as an alternative to the care order, and
- you are or are applying to be joined as a party to those proceedings:²⁹

b) If you are applying for an SGO to protect a child and there has been child abuse or there is a risk of abuse from the person who is the respondent to your application

The respondent to your application will usually be a parent, in this type of situation. You will need to show that the child is at risk of harm in their care. The kind of evidence that you will need to show 'risk of abuse' is set out in legislation.³⁰ You (or the solicitor who is helping you) will need to show the Legal Aid Agency evidence of one of the following:

- That the respondent to your application is on bail for a child abuse offence;
- That the respondent to your application has an unspent conviction for a child abuse offence;
- That the respondent to your application was given a police caution for a child abuse offence;
- That the respondent to your application is involved in criminal proceedings for a child abuse offence which have not concluded;
- That there is a protective injunction in force which protects the child from the respondent to your application;
- That there has been a finding of fact of abuse of a child by an individual other than you, made in proceedings in the United Kingdom;
- That there is a letter from a children's services department confirming that, the child was assessed as being, or at risk of being, a victim of child abuse by an individual other than you;

- That there is a letter from a children's services department confirming that, a child protection plan was put in place to protect the child from abuse or a risk of abuse by an individual other than you;
- That an application for an order for a protective injunction made with an application for a prohibited steps order under section 8 of the Children Act 1989(a) which has not, at the date of the application for civil legal services, been decided by the court

Also, as well as being in one of the above categories, you will need to meet the merits and means test set by the Legal Aid Agency.

Merits test: you showing that you have a reasonable chance of being given an SGO when you go to court; and

Means test: your income and capital being assessed to see if you are within the financial limits set by the legal aid agency. Even if you are in receipt of benefits, your capital will still be assessed.

c) Human rights exception

There is a catch—all provision for those cases that would otherwise not be eligible for legal aid. Legal aid may be available if you can show that your human rights will be breached if legal aid is not provided, or that there is a risk of such a breach if legal aid is not provided. This is determined on a case-by-case basis by the Legal Aid Agency. Your income and capital would need to be assessed as well.

For further information see www.justice.gov.uk/downloads/legal-aid/funding-code/chancellors-guide-exceptional-funding-non-inquests.pdf

Children's services may help you with your legal costs

- If the social worker has asked you to care for someone else's child then they may offer financial help towards your legal costs, but they don't have to. It is therefore worth asking the social worker for help with both your legal fees and court fees .

- Children's Services should have a policy document explaining how they will support family and friends carers. This may include the circumstances in which they will pay legal costs. You should ask for a copy of this policy document so you know how your request will be dealt with. For further information on this, see page 40.³¹

Other family members may be able to provide you with financial support.

This might arise when, for example, there has been an agreement between family members (maybe at a family group conference) that they help you with your solicitor's costs.

You can make an application for an SGO yourself as a litigant in person

- If you are not able to get help with your legal costs and you cannot afford to pay for a solicitor yourself, you can apply for an SGO on your own as a 'litigant in person'. This means that you will have to complete the forms and speak for yourself in court.
- Going to court on your own might sound scary, but judges, magistrates and the court staff will often do their best to make the experience as easy as possible especially for people who do not have a solicitor.

If you are going to make the application by yourself, you can get more information about taking a case to court from:

A Guide to Representing Yourself (produced by the Bar Council) - at

<http://www.barcouncil.org.uk/media-centre/publications/2013/april/a-guide-to-representing-yourself-in-court/>

Guides available on the Advice Now website at <http://www.advicenow.org.uk/know-hows/legal-advice> and <http://www.advicenow.org.uk/going-family-court>

You may also get help with taking your case to court from the Personal Support Unit at <http://thepsu.org/> or any of the sources listed here

However, you also need to be aware that even though you won't be paying your solicitor's costs, you will have to pay the court issue fees (discussed on page 29)

unless children's services will help you with this or you can claim a fee exemption.

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Can I take someone with me to court if I don't have a solicitor?

Yes, normally you can although you will need to ask the court for permission. For further information see page 36.

STAGE FOUR: APPLYING TO COURT

For information on applying for an SGO see:

<https://formfinder.hmctsformfinder.justice.gov.uk/cb4-eng.pdf>

Which courts do I apply to?

All family law applications are now issued in one type of court – the family court. Your case may be allocated to a different level of judge within the family court, depending on whether it is straight forward, or complex. The types of judge that may deal with your application are:

- Specially trained magistrates
- Family court District Judge
- Family court Circuit Judge.
- Family court High Court Judge.

Generally speaking you should apply to the family court nearest to where the child lives. However, if you are making an application about a child where there is an existing court case about that child, for example care proceedings, you should apply to the same court which is already dealing with that case. A full list of courts and the type of work that they do is listed on the courts website at:

<https://courtribunalfinder.service.gov.uk/>

or you can check your local telephone directory.

If you are applying for a special guardianship order in a case where there are already care proceedings about the child's future, the timetable for the proceedings will be very strictly controlled by the court. Under new rules, the whole case must be completed within 26 weeks. This means that there are very strict procedural rules about how and when things must be done.

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You will still need to use the forms set out below but there are other procedural steps you need to be aware of. Please refer to the FRG Advice Sheet Care (and related) Proceedings <http://www.frg.org.uk/need-help-or-advice/our-advice-service/advice-sheets> or call FRG Advice line for further advice – contact details in part 4 of the advice sheet.

Where can I get the forms I need to complete?

All the forms you need can be downloaded from the courts website at:
<http://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do>

You can search by the form number given below. Alternatively, you can ask the court office to give you the forms you need.

Which forms do I need to complete?

Exactly which forms you need to complete will depend on whether you have a right to apply for an SGO or whether you need the court's permission first and whether there are existing family proceedings or not. This next section is quite complicated so if you have trouble following it you can always ring Family Rights Group advice line for further advice – contact details in part 4 of this advice sheet or you can ask the court staff to help you work out which forms you need to complete.

You have a right to apply for an SGO if you:³²

- Are a guardian of the child who was appointed by the parent or special guardian to look after the child after they died; or
- Are a person who already has a residence Order or a child arrangements order saying that the child should live with you; or
- Are a foster carer who is approved by children's services and you have had the child living with you for at least one year before you apply for the SGO; or
- Are a grandparent, aunt, uncle, sibling, step-parent who has had the child living with you for one year immediately before you apply for the SGO; or
- Have had the child living with you for at least 3 out of the last 5 years up until 3 months before you make your application; or
- Have the consent of:

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- any person who has a residence order or a child arrangements order saying the child should live with them, or
- Children's services if the child is already in care under a care order, or
- in any other case, you have the consent of each person who has parental responsibility (usually the parents, but may also include step-parents, guardians etc.)

If you do not need permission to apply (any of the above categories) then if there is no existing case about the child you need to complete **Form C1**.

- To download form C1 go to:
http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court_forms_id=50
- To download court guidance notes (CB1) on completing court forms C1 go to
http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court_forms_id=50

If there is an existing case about the child which you want to join to make your application for an SGO, (for example, if children's services have started care proceedings) then you need to complete **Form C2**.

- To download Form C2 go to
http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court_forms_id=78

In all cases you need to complete Form FM1 (to confirm that you have attended mediation, or are exempt from it – see above at page 12-14) and Form C13A (notice to local authority) as well.

- To download Form FM1 go to
http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court_forms_id=2654
- To download Form C13A go to
http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court_forms_id=1099

People who require the permission from the court to be able to apply for an SGO

- If you do not fall into any of the above categories of people who have a right to apply for an SGO then you need the permission (leave) of the court first before you apply for the order.
- To apply for permission (leave) you need to complete **Form C2**
- To download a form C2, go to:
http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court_forms_id=78

Tips about completing forms:

- You cannot make an application for an SGO unless you have first told children's services in writing 3 months before you apply that you intend to apply for an SGO.
- The court will only make an SGO if it considers this will be best for the child, so when completing these forms, it is good idea to
 - Explain briefly why you think an SGO would be best for the child,
 - Think about the things in the welfare checklist (see page 6-7) and also
 - Say why it would be better for the child for an SGO to be made rather than a child arrangements order or another legal arrangement.
- If you are asking the court for permission you will be completing Form C2. In it you need to explain why you are making the application. This includes addressing the things that the court must look at when deciding whether or not to grant permission. These are:³³
 - The kind of order you wish to apply for as compared to other possible orders or legal arrangements
 - Your personal relationship with the child (i.e.: how well you know the child and what sort of connection exists)
 - Whether making the application for an SGO would cause 'disruption to the child to the extent that they were harmed by it'. For example if the court case itself was going to cause such stress in the household where the child lives that they would be damaged by the impact of the case being heard.

Further information on completing Form C1, C2, FM1 and C13A can be found in Appendix 4 on page 58.

If you have any further questions about how to complete the forms you can always speak to the court staff or contact Family Rights Group advice line – contact details in part 4 of this advice sheet.

For information about what happens at the permission hearing, see page 33.

Important note about timing

You must apply for the court's permission before you give written notice that you intend to apply for an SGO to Children's Services. You will then need to wait a further 3 months from the date you gave notice before making the main application for an SGO. You will find that many courts are happy for you to give them all the forms in one go when applying for permission. You can mark the C1 and C13A 'draft' and they will be issued only once permission to apply has been granted and proper notice given. But you will need to check back with the court 3 months after you give notice to make sure they issue the main application.

What happens if there is domestic violence or abuse in the case?

Whether or not you need the court's permission to apply for an SGO, **you will also need to complete Form C1A** if there has been any domestic violence or abuse against you or the child concerned from another person involved in the case or their household or if there is any on-going risk of harm or abuse to either of you.

Form C1A can be found at:

https://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court_forms_id=74

You can find guidance notes on how to complete form C1A if you go to

https://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court_forms_id=74

What should I do if I think that the child needs urgent protection?

If you believe that the child needs urgent protection you must inform the court of this. This might arise, for example, if you are a grandparent and the child has lived with you for some time, possibly with the support of children services, and their parent suddenly says that they want to remove the child from your home and you would be concerned for the child's safety if they were to do so. ***You should tell the court about your concerns on your application form and in more detail in a supporting statement to be given to the court.***

However, since the court can only make an SGO after children's services has prepared a report for the court, which takes at least 3 months, it is not possible for the court to make an SGO quickly. Also it does not have the power to make a temporary SGO. But:

- Once your SGO application has been issued, the court could make an interim child arrangements order to secure the arrangements for the child to live with you temporarily until the full hearing of your application for an SGO so you could ask for this on your application form.
- Alternatively if you think the child needs an order quickly you could apply for a Child Arrangements Order separately – see FRG advice sheet: DIY Child

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A WORD OF CAUTION:

If the court makes an interim child arrangements order to give the child immediate protection, before making an SGO at a later date, it may be harder for you to get support to raise the child so we recommend that **you should always take legal advice** about interim orders before agreeing to them - **contact a solicitor or Family Rights group advice line for further advice about this – contact details in part 4 of this advice sheet.**

Can I keep my address confidential?

If you do not want to disclose your address to other people in the case (eg. the parent(s) or guardian(s) of the child), then do not put your address on the forms. But you will need to explain to the court why you are not disclosing it so you will need to fill in a **Form C8** and attach that to your application. Once you have done this, your address will not be disclosed without the court's permission.

Can I talk to other people about my application for an SGO?

Once you have started court proceedings concerning a child, the law places restrictions on what you can say about the case to other people, although you can always talk to a solicitor or other legal adviser. See leaflet **EX710 Guidance on disclosing information about family proceedings involving children which are heard in private**:

https://hmctsformfinder.justice.gov.uk/HMCTS/GetLeaflet.do?court_leaflets_id=947

STAGE FIVE: FILING THE FORMS WITH THE COURT

I have completed the court forms- what do I do next?

You need to prepare the papers to be filed at court so you need to

- Check the form(s)
- Sign and date the form(s)
- Copy the form(s).

You will need to give the court the following:

- Form FM1: You need to file a form signed by a family mediator, known as FM1 confirming that you have met with them to discuss mediation and/or explaining why you are exempt from mediation in your case (see page 11-13 above).
- The original signed C1, C13A and C1A – if you need the court's permission (leave) to apply for an SGO, you can only file these papers as drafts at this stage;
- The original signed C2 (if you need permission to apply for an SGO or to join existing proceedings about the child)
- In cases where you have been granted permission to apply, a copy of the order granting you permission.
- The court's fee or an exemption form – see the next question for when you may not have to pay this fee.

You will also need a copy of all these papers for:

- Every respondent (i.e.: every other person involved in the case, such as the parents or others with parental responsibility – ***the court office will advise you on who should be a respondent***)
- Yourself
- CAFCASS

Take or send the correct forms, copies and fee to court.

What fee will I have to pay the court?

Court fees are different to legal fees. Normally you will have to pay a court fee of £215 to apply for a special guardianship order even if you don't have a solicitor. You can find out about this in the section of fees on family cases towards the end of leaflet EX50 – Civil and Family Court Fees, which you can get from:

https://hmctsformfinder.justice.gov.uk/HMCTS/GetLeaflet.do?court_leaflets_id=264

or from the court staff directly.

However, you can apply for a fee concession if you are receiving a means tested benefit, or you would suffer financial hardship if you pay the fee. You can find out about this in the combined booklet *EX160A – Court Fees, do I have to pay them?*

Again, you can get a copy of this at the court, or at

https://hmctsformfinder.justice.gov.uk/HMCTS/GetLeaflet.do?court_leaflets_id=283

3

What will the court do when they receive my forms?

The court will check you have completed the forms correctly. It will give you a date and time for the first hearing. This will either be a “directions hearing” if you don't need permission to apply for the SGO or a “permission hearing” if you do.

In either case the court will return the forms, together with some other forms, for you to give/send to the respondents (other people involved in the case). This is known as **serving** the papers.

How do I serve the papers on the respondents (other people) involved in the case?

The court office will tell you who to serve the papers on and it is your job to make sure this happens at least 14 clear working days before the hearing. If you need to reduce this time period for example because you are making an urgent application, ask the court office how this time period can be reduced.

The court will normally send you a leaflet “**CB3-Serving the forms-Children Act 1989**” which explains how to serve the papers. You can also get a copy at:
https://hmctsformfinder.justice.gov.uk/HMCTS/GetLeaflet.do?court_leaflets_id=97

Key points include:

- If the respondent (other person in the case) has a solicitor you must serve the papers on the solicitor instead of the respondent. This is done by:
 - Taking the forms to the solicitor's office and handing them in or sending the forms to the solicitor's office by First Class post;
 - Fax or email or other electronic delivery where transmission date and time can be noted and recorded. You will need this information for completing your ‘Statement of Service’ (see below on page 31).
- Children’s services need to be served with papers, by sending or delivering their sets of papers to their legal department in the same way as you serve on solicitors’ offices.
- If the respondent (other person in the case) does not have a solicitor or you are unsure if they do, you must serve the papers by handing the papers to the person or by sending the person the bundle by first class post, by fax or electronically as above keeping a record of time and date of successful transmission
- You also need to serve notice of the application on anyone else entitled to be notified of the proceedings (they are listed on page 58). You do not need to send them the application form – just the notice of application form C6A

Important note about serving the papers

- If you have ANY concerns about your safety or that of any child living with you, ALWAYS post or electronically deliver the papers to the other person.
- It is a good idea to get the Post Office to provide you with a ‘Proof of Postage’ slip before you send any important documents or you can send forms by recorded delivery or registered post.

How do I prove that I have served the papers correctly?

- After serving the papers, you **must** complete **Form C9 (Statement of Service)**. This can be found at :
https://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court_forms_id=89.
- This form asks you to say who you have given the papers to, what papers you gave them, the date you gave them and the way you gave them the papers.
- Once you have filled in Form C9, take a copy of it and then send or take the original form to the Court Office where it will be put on the court file.

If you have not served the papers by the date given by the court, or, if no date is given, by 14 days before the hearing, you must let the court know and explain why.

What happens next?

- Every respondent (other person involved in the case) must send a formal acknowledgement that they have received the application within 14 days of receiving it on the form provided by the court.
- Other people who have been notified of the application (but are not respondents) do not have to acknowledge that they have received the form.

STEP SIX: WHAT WILL HAPPEN AT THE COURT HEARING?

If you are applying for an SGO within existing care proceedings, the case will proceed in a different way to the steps set out here. There will also be a very strict timetable for the case – it must be completed within 26 weeks. This means that you will have to try to comply with that timetable and get any additional evidence you need very quickly. Please refer to FRG advice sheet Care (and related) Proceedings or call FRG advice line for further advice – contact details in part 4 of this advice sheet.

Are you are applying for the court's permission to apply for an SGO ?

- If you have applied for permission, the court will either:
 - Grant the application for permission and send a copy of the order to you or
 - Let you know that it has listed your application for permission for a short hearing to allow the other party to come and explain any objections they may have.
- What actually happens at that hearing will depend on a number of things in your case, like whether the other person attends and whether they agree to permission being given so you can make your main application - that is not the same thing as them agreeing to the actual SGO being made
- If permission is granted you then need to give notice of your intention to apply to Children's Services and then wait 3 months before making your main application for an SGO – see page 16 above.

Are you are applying for an SGO without needing the court's permission ?

Your application will usually be listed for a 30 minute hearing called a “Directions Hearing”. This hearing is used to decide what need to be done to prepare the case for a full hearing including:

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a) Making an order about the temporary living arrangements for the child until the final hearing:

- If the child needs urgent protection or there is some other need to define the temporary arrangements for the child, the court may make an interim (temporary) order. This might be an interim care order if there are existing care proceedings, or it may make an interim child arrangements order stating that the child will live with you and give you parental responsibility (i.e. the power to make decisions about the child's care) until the court considers the case again at the final hearing.
- In some cases the court may also want to define contact arrangements for the child to be in touch with other members of the family until the final hearing. In this situation it may make an interim child arrangements order (saying who the child should see). However it will only do this if it is safe and in the child's best interests.

b) Procedural steps:

- The court will look at what is and what is not agreed between you and the respondent (typically the parents).
- Where there is on-going disagreement between you, the court may order statements to be prepared by all the people involved in the case
- In your statement you will need to explain why you think the order you are asking for would be in the child's best interests. It is your chance to tell the judge your story and convince them as to why an SGO in your favour would be the best option for the child. So when you prepare this statement it is important to address the factors listed in the welfare checklist on pages 6-7
- You could also think about whether there is anyone else who could come to court to support your case, such as other relatives or friends who may help you out with baby-sitting or who can confirm that you have a good relationship with the child. If you want to call others to support you at the final hearing of your application, they will need to prepare statements too.

- Consider whether there are other people, who do not have parental responsibility but are close relatives, who may need to become involved in the case in their own right
- The court must avoid unnecessary delay in deciding the case where this would be harmful to the child. Therefore it will draw up a timetable for the case, setting deadlines for when reports and statements need to be with the court. It will also set a date for the next hearing.
- The court will set a date for the next and/or final hearing, giving a time estimate of how long it will take to hear the evidence in your particular case.
- If the other people involved in the case want to formally question anyone who is coming to court to support your case, you must arrange for them to be at the final hearing.
- Court bundles: if the hearing is for 2 hours or more, then the court papers (applications, statements, reports etc) must be put in order with page numbers in a ring binder ready for the final hearing with a spare copy for witnesses. Normally the person applying for the order (applicant) prepares this 'court bundle'. But if you don't have a solicitor and are a litigant in person then the rules say the first other party who does have a solicitor must do it.
 - It is a good idea to find out in good time who is preparing the 'court bundle' and arrange to collect a copy of the index in time to make sure you have all the documents in it and familiarise yourself with it before the hearing.
 - The solicitors preparing it may ask you to hand in a summary of any legal arguments you want to make to go in the bundle. You only need to do this if you are making a special legal point.
 - The solicitors should ask you to agree to the index and what documents go into the bundle. They must put the index at the front of the court bundle along with:
 - the background summary and chronology, and
 - a list of what isn't agreed that the judge is being asked to decide.

- You should read these documents carefully. They should be balanced and fair. If you agree them the judge will take that as your position. If you don't agree with something then you could consider offering a version you could agree or ask the solicitor to note on the documents that they are NOT agreed.
- Tell the solicitor if documents you need the Judge to see are not in the index and give them a copy to put in.

You don't need to read the court guidance on preparing the documents but you can find it here if you want to: [Practice Direction 27A Court Bundles](#).

What happens at the Final Hearing?

- As the applicant, you will have to make the opening statement to the court, explaining your case. This does not need to be long, but should be a simple, clear explanation of why you are applying for an order. You might simply want to read out the short statement you made in form C13A (your reasons for applying for special guardianship and any plans for the children).
- Once you have made this statement, the solicitor or barrister representing other people in the case will be asked to respond to your application and statement and the judge or magistrates may also ask questions to clarify anything.
- If you are asked to speak in the witness box, you will be asked to take an oath or promise to speak truthfully. You will need to talk about any statement you have made and answer questions from the other people's solicitor or barrister (cross-examination). The judge may also ask you questions directly.

Can I take a friend with me?

- If you do not have a solicitor you can ask the judge or magistrate for permission to take a friend or family member into court with you to give you support.
- The court will ask the other 'party' (people) in the case if they agree; but in general someone who does not have a solicitor will usually be allowed to bring a friend with them as long as that person is quiet and unobtrusive.

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- This person cannot normally speak for you in court, but they can give you moral support whilst you are in court and remind you of things you want to say.
- If you wish take someone into court to help you, you must read the court guidance on how family members/friends should conduct themselves in these circumstances see <https://www.judiciary.gov.uk/publications/mckenzie-friends/>

Will anyone represent the child in court?

- The child will not automatically have someone to represent their views unless there are existing care proceedings or there is an existing care order. In either of these situations, a CAFCASS officer and a solicitor will be appointed to represent the child in the case.³⁴
- If there is no existing care order on the child the court **may** still appoint a CAFCASS officer (and solicitor) to represent the child if this would be in their best interests.³⁵
- When Children's Services prepares its report for the court, it may say in the report if it thinks the child should be separately represented in the case.

Key points about representing yourself in court (especially if you don't have a solicitor)

- The judge or Magistrate and lawyers will not wear a wig and gown. The judge should explain to you at the beginning what is going to happen during the hearing
- As long as you are polite and respectful to all of the people involved in the case, you do not need to be too worried about legal matters. You can usually ask the judge for help if you do not understand what you are being asked to do; and the solicitor or barrister representing any other person involved in the case should normally explain things to you as well.
- Although appearing in court may feel scary, the judge or magistrate will not allow a solicitor or barrister to harass you. Some judges say that they gain a far

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better picture of the family situation and dynamics from listening to relatives speaking directly rather than simply reading statements and welfare reports.

- You will be expected to go to all court hearings unless the court tells you differently.
- You can take along a friend or relative to give you support but they will only be allowed in court with you if the court gives permission for this (see page 36). They will not be allowed to speak on your behalf. However if your supporter is also someone who you want to call as a witness to support your case, they will not usually be allowed in court until after they have spoken in the witness box.
- The law now allows accredited journalists to sit in family courts but they cannot report anything that would identify the child or family during the proceedings. The court can stop them going if there is a good reason.
- Finally, if for some reason you decide to withdraw your application for an SGO you will need the permission of the court to do so. Do think carefully before you decide to do this as you may be reacting to a stressful experience or understandable anxiety because the case seems to be taking a long time. You can always call the FRG advice line to discuss your worries before taking any major step which you might later regret – FRG contact details are in Part 4 of this advice sheet.

Will there be any publicity about my case?

- The basic rule is that a judgment in a family court case involving children **cannot** be published unless the hearing was held in public or the judge has given permission.
- However the rules have recently changed so that when a case is heard by a **Circuit Judge or a High Court Judge**, certain judgments (for example in care proceedings) must be published 'unless there are compelling reasons' why they shouldn't be. This is decided on a case by case basis. You, your child and your family should not be identified but any professionals in your case would normally be named.
- If you are worried about publicity talk to your solicitor about it – they may be able to argue against it in court if you have good reasons to object.

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PART THREE: GETTING HELP TO RAISE THE CHILD

What support can children's services provide in special guardianship cases?

Children's services must make arrangements to help people affected by special guardianship in their area. These services can be provided by children's services or may be provided by another organisation (like a charity) on their behalf.³⁶

Once children's services receive your letter telling them that you intend to apply for an SGO (see page 17), they must tell you about the help they can give and how you can ask for your and the child's needs to be assessed.

The help they can provide includes the following:

- Financial help for you as special guardian who is looking after the child. This is means tested.
- Help to enable the child, their parents and you to discuss things related to special guardianship. This might include support groups which children's services help to set up for special guardians and also for parents.
- Help with the contact arrangements for the child to stay in touch with their parents and any other relatives/other person they have an existing relationship with. This help can include:³⁷
 - Cash to help with the costs of contact. This is not means tested;³⁸ and
 - Mediation to help resolve difficulties which may arise on contact.
- Therapeutic help for the child. Funding for this is available from the adoption support fund, but you may need to ask your social worker to access this for you.
- Support for you to have a positive relationship with the child. This might include:
 - Respite care where the child could stay with an approved foster carer for a few days to give you a break;
 - Training for you to help you meet the child's needs.
- Counselling, advice, information and other support services.

Children's services are also required to have a policy on the support they provide to family and friends carers, including special guardians, by 30th September 2011.³⁹

This policy should include specific things like:

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- Housing: there should be a protocol between children's services and the housing department /social landlords to prioritise needs to family and friends carers for suitable accommodation to prevent a child going into care.⁴⁰ So if you would need larger accommodation to take on the care of the child and you rent a house from the council or a housing association you can ask for a transfer to larger premises.
- Support for contact: the policy should include information about local contact centres and family mediation services.
- Help with legal costs – as discussed on page 18.

It is a good idea to ask the social worker for a copy of this policy so you can see what is available in your area.

Can I get financial help from children's services?

As stated above, children's services can ***give you financial help:***

i) To enable you to become a special guardian, and, once the order is made, to enable the special guardianship arrangement to continue, provided they:⁴¹

- “consider it necessary” to ensure that you can look after the child; or
- consider that the child needs special care, arising from an illness, disability, or from them having emotional or behavioural difficulties. These may arise from past abuse or neglect where there is a need for unusually high expenditure.

ii) Where they “consider it appropriate”, they may also help with your legal costs (including court fees). This can include fees for you to apply for an SGO to be made or ended and also any application about contact arrangements for the child etc. Their criteria for offering help with legal costs should be set out in the family and friends care policy (see page 18 above).

iii) Where children's services thinks you need help towards the cost of accommodating and maintaining the child. This support can be paid:

- As a single payment (this could be by instalment and could cover things like help to buy a larger car or help with alterations to your house to create suitable accommodation for the child); or
- On a regular basis if there is a continuing need for financial support.⁴² If you were previously a local authority foster carer for the child, you may also be able to receive an additional reward element for up to 2 years (or, exceptionally, for even longer) if you previously received this as part of your fostering allowance.⁴³

iv) If the child was looked after in the care system before the SGO was made, children's services should provide advice and assistance including financial support to the young person after they reach 18 including financial support for further education – see page 47.⁴⁴

Note about tax liability, benefits and special guardianship

If you receive a special guardianship allowance:

- You do not have to pay income tax on any special guardianship allowance you receive from children's services
- SG allowance is disregarded when assessing your entitlement to means tested benefits and tax credits (see section 5 in advice sheet 21b 'Social security support for friends and relatives looking after someone else's child' for more information about means tested benefits and tax credits:
<http://www.frg.org.uk/need-help-or-advice/our-advice-service/advice-sheets>)
- Children's services may take into account benefit and tax credit entitlement when assessing what financial support they will provide by way of special guardianship allowance. They should not however deduct child benefit from the allowance if you are receiving income support⁴⁵
- Further advice on paying tax and claiming tax credits should be sought from HMRC⁴⁶ – www.hmrc.gov.uk

Will I be means tested?

- Yes, except for help with legal costs.
- With other support (for example to maintain the child when they are living with you), whether or not you get financial support will depend on the social worker's assessment of the child's needs and your circumstances including what money you have and whether or not you have a right to any benefits or tax credits etc⁴⁷
- When deciding how much they will give you, Children's Services should be guided by the amount of the foster care allowance they would pay you if you were fostering the child.⁴⁸
- However, there is no means testing when Children's Services help with your **legal costs** to apply for an SGO on a child they are already looking after

Do I need to tell Children's Services if my financial circumstances change?

Yes. In the case of financial support which is paid periodically, you must tell Children's Services immediately if there is any change of circumstances. You must also provide an annual financial statement of your financial circumstances and the financial needs of the child.⁴⁹

If you do not do this, Children's Services must send you a written reminder and if you do not send in this financial statement within a further 28 days, they may suspend or end the financial help they give you.⁵⁰

Does Children's Services have to give me support?

No, but they must assess your need for support in some circumstances:

If the child was looked after by Children's Services before the SGO was made (whether under a care order or in accommodation by agreement with the parents), they must carry out an assessment of need for support when asked to do so by:⁵¹

- The parent
- The child who is under the SGO and/or

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- You (the special guardian).

If the child was not looked after by children's services before the SGO was made, children's services may carry out an assessment of the need for support when asked to do so by the same people.⁵²

Also, whether or not the child was looked after by children's services, they may carry out an assessment for support services if anyone else who they think has a significant and on-going relationship with the child asks (for example the child's relatives).⁵³

What does an assessment of my and the child's needs involve?

- The assessment of the child's needs will be carried out following the local protocol for assessment that should follow central government guidance.⁵⁴
- Again you will need to ask children's services to assess the child's needs and you can ask the social worker for a copy of your local protocol for assessment.
- This assessment involves them interviewing you and they will look at the relationship that you have with the parents and what help is needed (if any) to help overcome problems, for example with the contact arrangements.⁵⁵

What can I do if children's services refuses to carry out an assessment?

- If children's services refuse to carry out an assessment of your and the child's needs, they must give reasons for refusing. You then have 28 days to challenge this refusal.
- If you do not manage to agree the help that will be provided, you can make a complaint – contact Family Rights Group advice service for more information on this – contact details in part 4 of this advice sheet or see FRG advice sheet on Complaints: <http://www.frg.org.uk/need-help-or-advice/our-advice-service/advice-sheets>

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How will Children's Services decide what support to give me?

- At the end of the assessment, children's Services must draw up a written report setting out what they have found about your needs. If they decide, as a result of the assessment, that you need support, they should send you a draft support plan. You will have 28 days to comment on this plan before it is finalised.⁵⁶ You should also be told where you can get independent advice and advocacy at this stage.
- Once they finalise their decision about the support they will offer you, they should tell you what their decision is and give reasons. They must also tell you the name of the person in Children's Services who will monitor the delivery of the plan.

What if Children's Services refuse to help me?

- If they think you don't need help, children's services must notify you of their intention to refuse support, and tell you how you can make representations to them if you don't agree with their decision. They should tell you how long you have to do this - normally it must be within 28 days⁵⁷.
- If after you have made representation they still refuse you support, you don't have a right to appeal but if this decision appears to be totally unreasonable you could take advice about making a complaint or whether there may be grounds for judicial review.
- For further information on this contact Family Rights Group advice line – details in part 4 of this advice sheet or see FRG advice sheet on Complaints:
<http://www.frg.org.uk/need-help-or-advice/our-advice-service/advice-sheets>

Can the help I get be taken away at a later date?

- Maybe if your circumstances change. The support plan drawn up by children's services will be reviewed at least every year, when there is a change in circumstances and/or if they think it is necessary.⁵⁸

- Reviews involve the same procedure for assessment as set out above. But if the change of circumstances is minor the re-assessment may occur through an exchange of written information rather than a full re-assessment.
- If Children's Services plan to vary or end the help they are giving you, they must tell you and give you an opportunity to comment before they finalise their decision.
- Again Family Rights Group advice service can give you more advice if you wish to make a complaint about this. See FRG advice sheet on Complaints: <http://www.frg.org.uk/need-help-or-advice/our-advice-service/advice-sheets>. Or call the advice line – contact details in part 4 of this advice sheet.

Which local authority is responsible for support if the child moves to a different area?

If the child was looked after in the care system before the SGO was made

If the child was “looked after” by a local authority immediately before the SGO was made, the local authority which was looking after the child is responsible for providing *non-financial support services* even if the child moves to a new local authority after the order is made⁵⁹. This responsibility remains for a period of 3 years. After that time, responsibility for support passes to the LA in which the child now lives⁶⁰.

However, if the support is financial, and it was agreed prior to the SGO being made, the responsibility for this financial support remains with the LA that was looking after the child before the SGO was made⁶¹.

If the child was not looked after in the care system before the SGO was made:

If the child was not looked after in care, the responsibility for all SGO support lies with the local authority in which the child now lives⁶².

These responsibilities are clearly set out in the legislation and guidance⁶³, but often children's services will still argue over which authority has responsibility. Courts have repeatedly stated that this is a matter for the local authority's to work out between themselves, and the special guardian should not miss out on support whilst the local authority decide who is responsible⁶⁴.

Can I get any state benefits/tax credits as a special guardian?

Yes. You will be able to receive child benefit for the child, although if you are a higher rate tax payer you will be taxed on this. You may also receive child/working tax credits and/or other relevant benefits, if you are eligible under the normal rules. For more information see FRG advice sheet on Social security support for relatives and friends raising someone else's child at <http://www.frg.org.uk/need-help-or-advice/our-advice-service/advice-sheets>

Also, if you get a special guardianship allowance (see below) from children's services this will not be deducted from any housing or council tax benefit you receive.

Can I get parental leave as a special guardian?

Yes. Special guardians may be also entitled to parental leave. Parental leave offers parents who qualify the right to take unpaid time off work to look after their child or make arrangements for their welfare⁶⁵. In most cases, this will only be available until the child's fifth birthday. For further information go to: http://www.direct.gov.uk/en/Parents/Moneyandworkentitlements/WorkAndFamilies/Parentalleaveandflexibleworking/DG_10029416

For further information on benefits and tax credits see FRG advice sheet on Social security support for relatives and friends who are caring for children looking after someone else's child. <http://www.frg.org.uk/need-help-or-advice/advice-sheets>

Can I get financial help for the child to be in further/higher education?

1) Bursaries for young people in further education:

There is a bursary scheme in place for some 16-19 year olds who continue their education after GCSE's. It is administered by colleges on a discretionary basis. Each college should have their own policy on how the bursary is awarded. Young

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people under an SGO do not necessarily have a right to it but it is worth asking their college for a copy of their eligibility criteria to see if it includes young people in family and friends care. For further information go to:

http://www.direct.gov.uk/en/EducationAndLearning/14To19/MoneyToLearn/16to19bursary/DG_066955

2) University Loans and Grants:

A student applying for university financial support is assessed on the basis of their parents' income.⁶⁶ A parent is defined as a natural or adoptive parent. The regulations do not say that there should be an assessment of other carers' income, so carers with an SGO should not be liable for university expenses.

If the student is 'independent' then they will not be financially assessed on their parents' income. They are treated as 'independent' where⁶⁷

- the young person is estranged from their parents (in the opinion of the Secretary of State),
- the young person's parents have both died,
- the young person was looked after by children's services for 3 months ending on or after his/her 16th birthday,

In most SGO cases, the young person should be able to satisfy the 'independent student' category, which means they will be eligible for financial assistance.

Further information can be found at:

<http://www.direct.gov.uk/en/educationandlearning/index.htm>

You can also get additional advice from the educational body the young person is applying to.

3) Support from children's services for further education:

If the child was looked after by Children's Services before the SGO was made, they will also have a right (between the age of 16 and 21) to advice and assistance from Children's Services (which last looked after them) to make their own arrangements when moving into independent living⁶⁸. This includes advising and befriending, financial support and vacation accommodation for the young person if they are under 25 and in full time education.

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PART 4: Where can I get more information?

Citizens Advice: is an independent organisation providing free, confidential and impartial advice. Their goal is to help everyone find a way forward, whatever problem they face. This may be money, benefits, housing or employment problems. You may be facing a crisis, or just considering your options. Online advice is available on the Citizens Advice website. They also have a national phone service called advice line. This is available in Wales for people who live or work there and is being rolled out in England:

- For England telephone: 03444 111 444
- For Wales telephone: 03444 77 2020
- TextRelay users should telephone: 03444 111 445
- Website: citizensadvice.org.uk

Civil Legal Advice: A free and confidential advice service run on behalf of the government. It provides information directly to the public on a range of common legal issues; helps people find out if they are eligible for free legal advice from a solicitor; and helps them find a solicitor. It can also help you find legal advisors and find out if you are eligible for publicly funded free legal help. Check to see if you're eligible for advice on www.gov.uk/check-legal-aid or apply online:

- Telephone: 0345 345 4345 Mondays to Friday, 9am to 8pm and Saturday 9am to 12.30pm
- Minicom: 0345 609 6677
- Text 'legallaid' and your name to 80010 to ask CLA to call you back. This costs the same as a normal text message.
- Website: gov.uk/civil-legal-advice

Coram Children's Legal Centre provides independent legal advice to children, parents, carers and professionals. Its Child Law Advice Service provides legal advice and information on areas of child, family and education law. To access this advice and information please visit www.childrenslegalcentre.com and follow the link to the Child Law Advice Service where you will be able to view a range of factsheets and 'how to' guides. Should you have clarifying questions following your

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visit to their website, their helpline number is available at the end of each factsheet. The helpline is available Monday to Friday 8am to 6pm.

Family Mediation: To find a mediator, you can contact:

- Your local National Family Mediation (NFM) service in your area. A list of services can be found at the following weblink; <http://www.nfm.org.uk> or you can also call NFM on 01392 271610 - open 9.00am - 5.00pm (Monday - Friday) or email: general@nfm.org.uk ; or
- The Ministry of Justice's Family Mediation Helpline (on 0845 602 6627) who can refer you to a mediator from their joint register.

Website: <http://www.familymediationcouncil.org.uk/>

Email: info@familymediationcouncil.org.uk

Address: Family Mediation Council, PO Box 593, Exeter, EX1 9HG.

Family Rights Group: is an organisation which provides free telephone and email advice to family members who are involved with Children's Services about the care and protection of their children.

- Contact FRG's advice line for specific advice about your case on 0808 801 0366. It is open Monday-Friday 9.30am-3pm.
- You can also visit http://www.frg.org.uk/advice_sheets.html where you can download other relevant advice sheets.
- Join the FRG parents' or family and friends carers' discussion boards.

Fostering Network is an organisation which provides advice to foster carers who are approved by Children's Services. They produce detailed pamphlets on benefits and tax as they affect foster carers, available at

<https://www.thefosteringnetwork.org.uk/advice-information/finances>

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Shelter helps people struggling with bad housing or homelessness. They provide advice, support and legal services.

Online advice is available at https://england.shelter.org.uk/get_help

Telephone 0808 8004444 (if you can't find what you are looking for online)

- 8am - 8pm on weekdays
- 9am - 5pm on weekends.

Specialist child welfare solicitor:

To find a solicitor who specialises in childcare law, you can contact:

1. Solicitors Regulation Authority, Ipsley Court, Redditch, Worcestershire B98 0TD
Telephone: 0870 606 2555 <http://www.sra.org.uk/consumers/find-use-instruct-solicitor.page>;

2. The Law Society of England and Wales, 113 Chancery Lane, London WC2A 1PL
Tel: 020 7242 1222 Minicom: 0870 600 1560 Fax: 020 7831 0344
E-mail: info.services@lawsociety.org.uk www.lawsociety.org.uk

You can search their website for details of local solicitors who are members of the Children Panel:

<http://www.lawsociety.org.uk/choosingandusing/findasolicitor.law>

3. Civil Legal Advice (CLA) See details above.
4. Citizens Advice may be able to recommend a local solicitor specialising in child care law. Citizens Advice is an independent organisation providing free, confidential and impartial advice on all subjects to anyone. The address and telephone number of your local CAB can be found in the telephone directory. There is also advice on line on their website.
Website www.citizensadvice.org.uk
Advice on line Website www.adviceguide.org.uk

Student Finance England

Information on finance available for students going to university or higher education in England can be found at the following website :

www.studentfinanceengland.co.uk

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References

ACA	Adoption & Children Act 2002 http://www.legislation.gov.uk/ukpga/2002/38/contents
CA	Children Act 1989 http://www.legislation.gov.uk/ukpga/1989/41/contents
CFA	Children and Families Act 2014 http://www.legislation.gov.uk/ukpga/2014/6/contents/enacted
CAA	Child Abduction Act 1984 http://www.legislation.gov.uk/ukpga/1984/37/contents
CSA	Child Support Act 1991 http://www.legislation.gov.uk/ukpga/1991/48/contents/enacted
FFSG	Family & Friends Statutory Guidance https://www.education.gov.uk/publications/standard/publicationDetail/Page1/DFE-00025-2011
SGR	Special Guardianship regulations 2005 The Special Guardianship Regulations 2005

Last updated 22 January 2018

APPENDIX 1: TESTAMENTARY GUARDIANS

What is a testamentary guardian?

A special guardian may appoint someone else to care the child after they die.⁶⁹ This person is called a 'testamentary guardian'.

When the appointment takes effect, the testamentary guardian will have parental responsibility for the child. BUT, there are some important differences between a testamentary guardian and a special guardian.

- A testamentary guardian has '*parental responsibility*', but they cannot exercise it to the exclusion of others with parental responsibility like a special guardian can. This means that if there is a disagreement between the adults who hold parental responsibility for the child, they will have to seek a court order if they cannot decide between them what is best for the child.
- A testamentary guardian is not automatically entitled to have the child live with them. In other words, if there is a dispute about where the child should live, for example between the parent and the testamentary guardian, this would have to be decided by a court
- A testamentary guardian is not entitled to support services in the same way as a special guardian, although they may apply to children's services for the child to be assessed for support under s17 CA 89 – see further FRG advice sheet 4 – Family support services

If I die, when will the appointment of the testamentary guardian take effect?

If a special guardian (SG) appoints a testamentary guardian, the time at which that appointment comes into effect will vary, depending on who else is alive and holds parental responsibility for the child:

- If, when the special guardian dies, there is another special guardian still living (usually their partner), the testamentary guardian appointment will not take effect;
- If, when the special guardian dies, there is no other special guardian living, the testamentary guardian appointment takes effect on the death of the special

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guardian even if there is a parent with parental responsibility still living at the time;⁷⁰

- If the special guardian appoints a testamentary guardian but when they die that order is no longer in existence (for example if the order has been discharged) the appointment will not take effect unless:
 - there is no longer a parent with parental responsibility and
 - no alternative appointment of a testamentary guardian has been made (for example by the parent).

Can the child's parent end the appointment of a testamentary guardian?

A parent with parental responsibility may apply to the court to bring the testamentary guardian appointment to an end⁷¹. A court deciding this kind of application will follow what it thinks is in the child's best interests.

Appendix 2: Features of typical legal statuses of a child living in family and friends care

	Informal arrangements incl private fostering	Children on Emergency Protection Orders and Care Orders	Children accommodated by Children's Services	Residence order/Child Arrangements Order (saying who the child should live with)	Special Guardianship Order
Who has PR?	Mothers, fathers/anyone else who has acquired PR by court order or agreement with parents	Local Authority (LA); Mothers, fathers/anyone else who has acquired PR by court order or agreement with parents	Mothers, fathers/anyone else who has acquired PR by court order or agreement with parents	Person with RO/CAO; mothers, fathers/anyone else who has acquired PR by court order or agreement with parents	Person with SGO who can exercise PR to exclusion of anyone else with PR; mothers, fathers/anyone else who has acquired PR by court order or agreement with parents
Who can make decisions on behalf of the child?	Carer can make day to day decisions about child's care but only those with PR can make important decisions e.g.: consent to medical treatment, leaving the UK etc	Carer can make day to day decisions about the child's care in consultation with LA, but LA makes all important decisions about child in consultation with parents or carers	Carer can make day to day decisions about the child's care in consultation with LA, but only those with PR can consent to medical treatment, leaving UK etc.	Person with RO /CAO can make decisions without having to consult others with PR (although should for important decisions) but some restrictions e.g.: name change, consent to adoption/ placement, change of religion	Person with SGO who has right to exercise PR to exclusion of anyone else with PR, but some restrictions e.g.: name change, consent to adoption or adoption placement, change of religion
Can the child be removed from me?	Yes by person with Parental Responsibility (PR)	Yes by LA	Yes by person with PR	No unless RO/CAO revoked or LA has EPO or CO	No unless SGO revoked or LA has Emergency Protection Order of Care Order
Can I take the child out of the UK?	Only with consent of all those with PR, or leave of court.	Only with consent of LA for up to 1 month, unless court gives leave	Only with consent of all those with PR or leave of court	For up to one month, otherwise consent of all those with PR or leave of court required	For up to three months, otherwise consent of all those with PR or leave of court required
Can I appoint a guardian?	Parents with PR/guardians can appoint a guardian – seek further advice on when appointment takes effect	Parents with PR/guardians can appoint a guardian – seek further advice on when appointment takes effect	Parents with PR/guardians can appoint a guardian – seek further advice on when appointment takes effect	No, person with RO/CAO cannot appoint guardian but parents with PR/guardians can appoint a guardian – seek further advice on when appointment takes effect	SGO holders can appoint a guardian – seek further advice on when appointment takes effect
Can the order be revoked?	N/A	Yes on application to court	N/A	Yes – parents and others with PR have a right to apply to revoke the order	Yes but parents need leave to apply to revoke the order - only granted if there is significant change of circumstances
Am I entitled to support?	Discretionary support under s.17, subject to assessment	Fostering allowance payable to LA approved foster carers	Fostering allowance payable to LA approved foster carers	Discretionary support under s.17 and residence order allowance, subject to assessment	Discretionary support under SG support services, subject to assessment – entitlement to assessment for SG's, child and parents

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Appendix 3: Contents of Children's Services report to the court on your suitability to be a special guardian:

Regulation 21 and the Schedule to the Special Guardianship Regulations states that this report must cover the following issues:

1. *The child* – such as:

- Whether the child has brothers and sisters;
- The relationship the child has with different members of the family and the arrangements for the child to see or keep in touch with different people in the family;
- The child's religion, race, culture and linguistic background;
- The child's educational needs; and
- The child's likes and dislikes etc.
- Whether the child has suffered any harm,

2. *The child's family* – such as:

- Details of both parents and the child's brothers and sisters;
- The child's relationship with his/her parents;
- The parents' religion, race, culture and linguistic background; and
- The parents' interests etc.
- Is there a risk that the parents, relatives, or any other person will harm the child in the future?

3. *The parents' and the child's wishes and feelings* about special guardianship if the child is old enough to understand, his/her religion and culture and any arrangements for the child to see/keep in touch with members of the family.

4. *You, as the prospective special guardian* – such as:

- Your family composition and circumstances;
- Your parenting capacity, including
 - Your understanding of the child's current and future needs, particularly any needs that are as a result of harm that the child has suffered;

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- your ability to meet those needs now and in the future;
- Your ability to protect the child from any current or future risk of harm from the child's parents, relatives or any other person particularly in relation to contact between that person and the child;
- Your ability and suitability to bring up the child until they are eighteen;
- Whether you are willing to follow the wishes of the child or parents in relation to his/her religious and cultural upbringing;
- Your attitude to the child having contact with his/her family; and
- Your reasons for applying for an SGO.
 - Your relationship with the child, before making the application, and now.

5. Children's services - such as:

- Details of any past involvement with the child;
- Details of any special guardianship support services to be provided to the child, you and/or the birth parents or where they have decided not to provide such services, the reasons; and
- Where children's services is already looking after the child, details of their involvement.

6. Medical information on the child, you and the birth parents.

7. An assessment of how an SGO would meet the child's long term interests as compared with other types of order.

Appendix 4: Filling in the forms!

FORM C1

Remember, in **all** cases you cannot apply for an SGO unless you have first given notice of your intention to apply to children's services 3 months before making the application.

But many courts will allow you to hand in the forms applying for the main SGO (C1 and C13A) when you issue the application for permission (leave) if you need this. Ask the court what their procedure is on this. You may need to mark the C1 and C13A 'draft' if you want to do this.

If you go back to pages 23-25, you can check whether you need the leave of the court before applying for an SGO. This will also tell you which forms you should be completing and give you the links to get those forms electronically. You can also get paper copies of the forms you need from the court office along with guidance on how to complete them.

When filling forms, don't leave questions blank. If you don't know what to write ask the court staff or say you don't know or it doesn't apply.

TIPS ON COMPLETING FORM C1

Page 1

- You do not need to put a **case number** on Form C1 as this is a new set of proceedings and the court will therefore issue you with a new case number for your SGO application.
- **About You:** It is possible to apply for an SGO jointly with another person for example your partner or your son or daughter if they are the parent of the child. If so you will need to list them as the second applicant.
- Tell the court here if you don't have solicitors acting for you. Section R of court leaflet CB1 lists some sources of help and support in that case.
- If your address needs to be confidential from some of the other parties leave it off the form here and fill out Form C8 to give your address confidentially only to the court.

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- **The children and the order you are applying for:** You will need to give the details of the children who are the subject of the application here and say you are applying for an SGO.

Other cases which concern the children: If you know there have been previous court cases about these children or their brothers or sisters, say so here. This could include family court cases and also criminal court cases concerning an adult harming the children or siblings. Give what detail you have and say if you don't have details. You could also ask the social worker for more details if the children have one. Or the children's parents if you feel comfortable to do this.

Page 3:

- **The Respondents:**

The respondents will be everyone who already has Parental Responsibility (PR) for the child i.e.

- ✓ the mother;
 - ✓ the father if he was married to the mother at the birth of the child or the parents have married since the birth or he is registered as the child's father on the birth certificate (since 1.12.03) or he has acquired it by formal legal agreement with the mother, by re-registering the birth, or by court order (s.4 CA 1989);
 - ✓ step-parents (including civil partners), if they have acquired parental responsibility by formal agreement with both parents with parental responsibility and lodged it with the Principal Registry;
 - ✓ anyone else who has already been granted parental responsibility under a court order such as a residence order, an SGO or an adoption order;
 - ✓ local authority where there is a care order in force; prospective adopters on the placement of a child for adoption with them;
 - ✓ second female parents in certain circumstances and
 - ✓ guardians appointed normally by parents to care for a child after their death and the parents have already died.
- If you don't know who has parental responsibility you can ask the children's social worker if they have one, or the child's parents if you feel comfortable to do so. If

not, you can talk to the court staff about what you should put here, referring to the above list of who has parental responsibility.

- Generally it's a good idea to assume that if an unmarried father is involved with his child, he will be on the birth certificate and will therefore have parental responsibility for children born after 2003. Also if the children are the subject of a care order or interim care order, children's services will have parental responsibility.
- There is likely to be more than one respondent, for example the children's mother and father. If you run out of space you can add another sheet.

Page 4:

- **Others to whom notice is to be given (i.e. who need to be told about the case):** Other people who do not have parental responsibility but are involved with the child in some other way will need to know about your application because they may wish to apply for an order themselves or ask the court if they can join in the proceedings, etc. You should list them here – they include:
 - If the child is in care (this might be a children's home or with foster carers), the Children's Services department that has responsibility for them
 - Everyone who is caring for the child
 - Any registered children's home or a voluntary home where the child is living
 - Everyone who already has an existing court order about the child and
 - Every person who is involved in any other court case about the child, unless that case is not relevant to your application.

If you are unsure about whether a significant person in the child's life should be listed here, you can ask the court staff to help you.

- **The care of the children:** Put the facts about the child's address, how long they have been there, who cares for them there and their relationship to any other children there. So you'll say here if the child has come to live with you already or been back and forth between addresses.
- **Domestic abuse, violence or harm:** The C1 form says at the top that you should not fill out question 7 about risk/harm unless you are applying for a PR Order. ***Our view is that you should complete this question.*** If you decide not

to and you later raise issues of risk or harm and are asked why you didn't raise them earlier, you will need to point out that the form told you not to.

- The idea behind the question is that harm/ risk of harm allegations that may be denied are raised early not part way through the proceedings, especially where they are not independently documented by children's services, Police etc. Tick the box and go on to complete form C1A (see below). Remember harm includes emotional harm and neglect not just physical or sexual harm. Emotional harm can include the children witnessing domestic abuse of another person in their household.

Page 5:

Social Services (now known as children's services): You don't need to go into any detail here just give the details of the social worker who was or is involved and summarise how they were involved. The court will then ask the social workers to provide information they need to decide the court application. Children's social services are now called children's services but it's the same thing. Being on the child protection register is now called having a child protection plan but again it's the same thing.

The education and health of the children: Again don't go into too much detail here but just alert the court to any significant education or health points. The court will later order statements from the parties or reports from professionals if it needs more information on this.

- **The parents of the children:** Give the details requested so far as known to you. Court cases here includes any relating to any child for example family or criminal court proceedings involving harm to a previous child or unrelated child as well as these children.

Page 6:

- **The family of the children:** This question ensures the court knows about brothers and sisters and half brothers and sisters of the children even if they don't live with them or see them.

- **Other adults:** Let the court know here if there are any other adults at all in the child's household and if they have been involved in any court cases, criminal or family, relating to any children.
- **Your reasons for applying:** You don't need to answer this question, just say here that your reasons are set out in supplementary form C13A. (Make sure you complete form C13A as the court needs your reasons).

Page 7

- **Attending the court:** You need to say here if you need an interpreter or additional support because of a disability or if you would like to be in a separate waiting area if for example you feel intimidated or threatened by anyone else involved in the case.
- **Parenting Information:** This section is for separating parents applying for residence and contact orders. Tick 'no' as it doesn't apply to you.
- **Statement of truth:** Sign and date the form. Then photocopy it so that there are enough copies for yourself, the court and all the people you have listed as respondents. You should then take them to the court office and pay the fee (if you are not exempt). For details of what happens next see pages 30-32 of this advice sheet.

FORM C13A

You need to complete form C13A in all applications for SGOs.

TIPS ON COMPLETING FORM C13A:

Q1: Your relationship to the child(ren)

- You need to clarify your relationship to the children by answering this question. From this the court will work out if you need permission/leave to apply.

Q2: Notification to children's services

- Make sure you give the name of the right children's services department which must be given notice.

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- If the child is 'looked after' by a children's services then you should give it to that department - remember 'looked after' means a child under a care order or a child 'accommodated' under s.20 Children Act 1989 by parental consent.
- If the child is not 'looked after' then you give notice to children's services in the area you are living in and that is the authority you put down on the form here.

If in doubt ask the social worker whether the child is 'looked after'. If you say the child is placed with you as a 'looked after' child but children's services say it's a private arrangement, you may want to get advice from the FRG advice line (contact details in part 4 of this advice sheet).

- If you have given written notice to children's services when you are completing form C13A then put the date here.
- If you are giving the court your form C13A with C1 in draft at the same time as you applying for permission to apply for an SGO on Form C2, you won't yet have been able to give notice to children's services that you intend to apply for an SGO because you need the permission (leave) of the court first. In this case, just mark forms C1 and C13A 'draft' at the top and say at Q 2 of C13A that you will give children's services this notice as soon as permission (leave) is granted. In that case give them notice as soon as permission (leave) has been granted. And check back with the court once the notice period has expired to make sure they issue the application for the SGO without delay.

Q3: Reasons for the application:

- You need to briefly explain here your reasons for applying for an SGO. That means the reasons why the child needs to be in your care under a legal order. The reasons will vary for each case. Examples include:
 - that the child has been living with you for a significant period of time, you expect it to be a long-term arrangement and the child needs to know it is a secure home;
 - that they are unlikely to return to live with their parents;
 - the child's social worker advised you to apply for an SGO;

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- your concerns that the child might be at risk of harm if they were to leave your home;
- you need to get parental responsibility to make all relevant decisions about raising the child etc.
- Remember that the court must decide what is in the **child's best interests** when deciding whether to make the SGO or not. It must consider a list of relevant factors known as the welfare checklist set out on pages 6-7 of this advice sheet. If you can refer to the checklist categories when you complete this section about why you are applying, it will help the court to understand why you think the child needs an SGO to be made.
- You will have a chance to give more detail later if needed. If children's services support your application, you won't always need to go into much detail later as they will do this. Sometimes this can be helpful to keep damage to relationships with the child's parent to a minimum.
- Try to also give reasons why a child arrangements order would not be enough in your particular case if you can – see Appendix 1 for a comparison of the different features of residence orders and SGOs.

Q4: Your plans for the child(ren):

- Tell the court here about the current arrangements for contact with parents or others if the child is already in your care or the ones that you have planned if the child has yet to come and live with you. If you are still working this out, for example with the help of children's services or if you need help and support to work this out, then say so.
- If you have worries about contact (or unsupervised contact) not being safe or emotionally right for the children, you should also say so here. It can be a good idea to discuss it with the child's social worker first and be guided by their advice unless you have good reasons for disagreeing.
- If you think mediation about contact with the parent might be helpful you can say so here.

- If you need to ask the court to formally change or end any existing court order including a contact order, say so here, because then the court will know it must decide this.
- The court has the power to attach conditions to any SGO it makes. You can speak to the FRG Advice Service if you are not sure if this applies or not.
- It is a very good idea to say here that you need children's services to assess what help you need to be a special guardian. Also you should say what kind of help would enable you to raise the child successfully, for example
 - help to find accommodation which is large enough to include the child in your family long term (this could be a transfer to a bigger council flat or even help to build an extension if you own your property).
 - help with contact arrangements
 - respite care for you to have a break
 - other help for the child like bereavement counselling or help to manage their behaviour
 - financial help
- Finally you need to set out your detailed plans for the child, for example which school they will attend, what arrangements you propose for them to see other members of the family including parents, brothers and sisters and other relatives.

FORM C1A

You need to complete form C1A if there has been any domestic violence or abuse against you or the child by the other person involved in the case or their household or if there is any other on-going risk of harm or abuse. You can look at the court booklet 'Notes on completing form C1A' which you can get from the court office.

The point is to be clear about any significant risk of harm that may be relevant from early on and say where more information can be found, not to go into detail. If the risk of harm is already well described by Children's Services then it will be enough to just say so.

FORM C2

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You may be filling in form C2 because you need permission (leave) or because you are making your actual application for an SGO on form C2 because there are existing proceedings. Or it may be both.

TIPS ON COMPLETING FORM C2

Q1 Summary of the application:

Are you applying for permission to issue your application for an SGO? If so, you can still put your main forms for the SGO in at the same time as the application for permission (leave). The court form asks you to tick 'yes and I enclose Form C100' which is an error on the form. You will be enclosing Form C1 not C100. Change the Form to say so if it applies.

Case Number: Ask the court or the social worker for this as it must go on your form if there are existing proceedings so your application is put together with them.

Orders you are applying for: Here put SGO.

Respondents: Turn back to page 57 of this advice sheet for help with who is a respondent. It is the child's relationship to the applicant(s) and respondent(s) that is asked for here.

Q2: About you the applicant:

- It is possible to apply for an SGO jointly with another person for example your partner. If so you will need to list them as the second applicant.
- If your address needs to be confidential from some of the other parties leave it off the form here and fill out Form C8 to give your address confidentially only to the court.

Q3: The respondents: Refer back to page 57 of this advice sheet for help with who is a respondent.

Q4: Others who should be given notice: Refer back to pages 58 of this advice sheet for help with who should be given notice.

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Q5: Solicitors details: Tell the court here if you don't have solicitors acting for you. Section R of court leaflet CB1 lists some sources of help and support in that case.

Q6: Details of application:

How you fill this part depends on why you are using the C2 form:

1. If you are using it to apply for permission (leave) and submitting a draft C1 form with it, then you must put your reasons for applying for permission here (not for applying for the SGO). Refer back to 25-26 of this advice sheet for the legal test the court will apply in deciding whether or not to grant you permission (leave). You should explain in brief:

- why you are applying for the order now and what plans you have for the child
- your relationship and personal connection to the child (how well you know the child and what sort of connection exists)
- If you are applying for leave to apply for an SGO, whether making the application would cause 'disruption to the child to the extent that they were harmed by it'. For example if the court case itself was going to cause such stress in the household where the child lives that they would be damaged by the impact of the case being heard.

And where the child is 'looked after' by a local authority for example under a care order and/or living with foster carers, you should also explain

- Children's Services' plans for the child's future
- the wishes & feelings of the child's parents. This may be difficult if, for example, if you are a paternal grandmother and you find communication with the child's mother difficult, but it could also help your application if you can say, for example, your son or daughter is happy for you to have the child living with you.

2. If you don't need permission (leave) but are using form C2 because you are applying for the SGO in existing proceedings, then you can just say here that your reasons are set out in supplementary form C13A. (Make sure you fill out form C13A as the court needs these reasons).

3. If you are applying for permission (leave) on Form C2 and applying into existing proceedings on Form C2 then you will need to do both (give your

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reasons for applying for permission (leave) and refer to your reasons for the SGO application set out in Form C13A.)

Q7: As with form C1, you need to say here if you need an interpreter or additional support because of a disability or if you would like to be in a separate waiting area if for example you feel intimidated or threatened by anyone else involved in the case.

Once you have completed, signed and dated the relevant forms, take them to the court with the fee and ask them to issue the application.

Appendix 5 – Evidence of domestic violence necessary if you are claiming to be exempt from attending a MIAM

If you are claiming that a MIAM exemption applies, you will need to tick the appropriate MIAM exemption boxes on form C100 or FM1, whichever you are using.

Listed below are the types of evidence you need. You only need one piece of evidence from this list. You do not need to include the evidence with your application form, but you should bring it to the first hearing to show to the judge.

The evidence must identify you or another applicant (for example if you and your partner are joint applicants) as the victim, or it must not identify a victim at all. If someone else (but not you) is identified as the victim, it will not be sufficient to support your application.

- ✓ The respondent to your application has an unspent conviction for a domestic violence offence;
- ✓ The respondent to your application has a police caution for a domestic violence offence given within the two years immediately before the date of your application;
- ✓ Evidence of criminal proceedings against the respondent for a domestic violence offence which have not finished;
- ✓ The respondent has had a protective injunction made against him/her which is in force or which was granted within the two years immediately before the date of the application;
- ✓ The respondent has given an undertaking in England and Wales not to cause harm to the applicant within the two years immediately before the date of your application;
- ✓ Evidence the respondent to your application is on police bail for a domestic violence offence;
- ✓ a letter from any person who is a member of a multi-agency risk assessment conference confirming that –
 - you or another applicant was referred to the conference as a victim of domestic violence; and

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- the conference has, within the two year period immediately before the date of the application, put in place a plan to protect you from a risk of harm by the respondent;
- ✓ A copy of a finding of fact, made in proceedings in the United Kingdom within two years immediately before the date of the application, that there has been domestic violence giving rise to a risk of harm by the respondent to you or another applicant;
- ✓ a letter or report from a health professional who has access to your (or another applicant's) medical records confirming that that professional, or another health professional –
 - has examined you in person within the two year period immediately before the date of the application; and
 - was satisfied following that examination that you had injuries or a condition consistent with those of a victim of domestic violence;
- ✓ a letter from a social services department in England or Wales (or its equivalent in Scotland or Northern Ireland) confirming that, within the two year period immediately before the date of the application, you or another applicant was assessed as being, or at risk of being, a victim of domestic violence;
- ✓ a letter or report from a domestic violence support organisation in the United Kingdom affirming –
 - that you or another applicant was, within the two years immediately before the date of the application, admitted to a refuge for victims of domestic violence;
 - showing dates on which you were admitted to and, if applicable, left the refuge; and
 - shows that you were admitted to the refuge because of allegations that you made of domestic violence;
- ✓ a letter or report from a domestic violence support organisation in the United Kingdom confirming –
 - that you were, within the two years immediately before the date of your application, refused admission to a refuge for victims of domestic violence because of there being insufficient accommodation available in the refuge;

and

- the date on which you were refused admission to the refuge;
- ✓ A letter or report from –
 - the person to whom the referral described below was made; or
 - the health professional who made the referral described below; or
 - a health professional who has access to your medical records,
 - confirming that there was, within two years immediately before the date of the application, you were referred by a health professional to a person who provides specialist support or assistance for victims of, or those at risk of, domestic violence;
- ✓ A domestic violence protection notice issued by the police (under section 24 of the Crime and Security Act 2010), or a relevant domestic violence protection order made by the court (under section 28 of the Crime and Security Act 2010), against the respondent within the last two years before your application.
- ✓ Evidence of a relevant court order binding over the respondent in connection with a domestic violence offence, which is in force or which was granted in the two years immediately before the date of your application.

¹ s.91(5)(a) CA
² s.14C (1) CA
³ s.14 (c)(1)(b) CA
⁴ s.14C (2) CA
⁵ s.14C (5) CA
⁶ s 5 CA as amended by s.115 (4) ACA)
⁷ s.8 CA
⁸ s.91CA
⁹ s.14(A (2)&(3) CA
¹⁰ s.14A(6) CA
¹¹ s.1(1) CA
¹² s.1(3) CA
¹³ s.1 (5) CA
¹⁴ G (A Child) [2013] EWCA Civ 965
¹⁵ s.1(2)CA
¹⁶ s.14B (1)(b) CA
¹⁷ Re: L (A Child) (Special guardianship and ancillary orders) [2007] All ER (D) 208
¹⁸ Regulation 3 SGR
¹⁹ s.14D(1) CA
²⁰ s.14D (3) CA
²¹ s.4A Children Act 1989
²² s.14D (5) CA 1989
²³ s.14D(5) CA; Re: G (A Child)[2010] EWCA Civ 300and Warwickshire CC v M (2008) 1 WLR 991
²⁴ s.14D(2) CA
²⁵ s.10 CFA 2014 and FPR2010 Part 3
²⁶ s.10 CFA 2014 and FPR Part 3.8
²⁷ s.10 CFA 2014 and FPR Part 3, and Practice Direction 3A.
²⁸ Reg 22B(2)(f) Care Planning, Placement and Case Review (England) Regulations 2010.
²⁹ Sch 1 para 1(2) LASPO 2012
³⁰ Civil Legal Aid (procedure)Regulations 2012 reg 34 as amended by the Civil Legal Aid
³¹ (Procedure)(Amendment No.2)Regulations 2017
³² FFSG Chapter 4
³³ s.14A(5) CA
³⁴ s.10(9) CA
³⁵ s.41 (6) & rule 16.3 FPR (2010)
³⁶ Rule 16.2 FPR (2010)
³⁷ Para 14F CA1989; Regulation 3 SGR; Para 24SG Guidance
³⁸ Regulation 3(1&2) SGR
³⁹ SG Guidance, para 27.
⁴⁰ para 4.2 FFSG
⁴¹ Paras 4.24-4.26 FFSG
⁴² Regulation 6
⁴³ Regulation 8 & 13
⁴⁴ Regulation 7
⁴⁵ s.14F (1) s.24 (1)A CA and Regulation 22 SGR
⁴⁶ LGO report no 12006209 at: <http://www.lgo.org.uk/information-centre/news/2013/aug/liverpool-city-council-fails-to-give-adequate-support-to-340-carers>
⁴⁷ HMRC report BN37
⁴⁸ Regulation 13 SGR
⁴⁹ SG Guidance para 65 and R(B)v Lewisham LBC (2008) EWHC 738
⁵⁰ Regulation 10 SGR
⁵¹ Regulation 10 SGR
⁵² s.14(F)(3)CA and Regulation 11 SGR
⁵³ s.14(F)(3) CA and Regulation 11 SGR
⁵⁴ s. 14(F)(4) CA and Regulation 11 SGR
⁵⁵ Para 62 & 63 Working Together to Safeguard Children 2015
⁵⁶ Regulation 12(1)(g) SGR
⁵⁷ Regulation 14 and 15, SGR
⁵⁸ s. 14F(5) CA and Regulation 15 SGR
⁵⁹ Regulation 17, SGR
⁶⁰ CA s14F and Reg 5 SGR 2005; Suffolk CC v Nottinghamshire CC [2012] EWCA Civ 1640
⁶¹ SGR Reg 5(2)
⁶² SGR reg 5(2)

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- ⁶² CA s14F
- ⁶³ Special Guardianship statutory guidance 2005 para 37
- ⁶⁴ See Suffolk CC v Nottinghamshire CC [2012] EWCA Civ 1640
- ⁶⁵ The Maternity and Parental Leave Regulations 1999, reg 13
- ⁶⁶ The Education (Student Support) Regulations 2011 (for those starting education after Sept 2012) sch 4 para 3
- ⁶⁷ ESSR 2011 Sch4 para2
- ⁶⁸ s.24 (1)A CA and Regulation 22 SGR); s.24A & s 24B CA
- ⁶⁹ s.5(4) CA
- ⁷⁰ s.5(7) CA
- ⁷¹ s6(7) CA89